

LEGEND:
SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
DOMINION ENERGY SOUTH CAROLINA, INC.
DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

Document No. 4969
PUBLIC SERVICE COMMISSION
 CHAPTER 103
 Statutory Authority: 1976 Code Section 58-3-140

103-823.2. Protection of Customer Data. (New)

Preamble:

The Public Service Commission of South Carolina proposes to add a regulation which pertains to protection of jurisdictional public utility customer data. On November 27, 2019, the Office of Regulatory Staff (ORS) filed a Petition for Rulemaking with the Public Service Commission “for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer’s direct consent.” The Public Service Commission is proposing a new regulation which addresses the ORS’s Petition for Rulemaking. Interested persons may submit comments to the Public Service Commission, Clerk’s Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-387-A. To be considered, comments must be received no later than 4:45 p.m. on Monday, August 3, 2020. The Notice of Drafting regarding this regulation was published on January 24, 2020, in the *State Register*, Volume 44, Issue 1.

Section-by-Section Discussion

103-823.2. This regulation, when it becomes effective, addresses the protection of jurisdictional public utilities’ customer data such as personal identifying information, customers’ names, account numbers, billing history, email addresses and telephone numbers, customer-specific usage or consumption information, and other information related to customers’ participation in regulated utilities’ programs.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Clerk’s Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-387-A. To be considered, comments must be received no later than 4:45 p.m. on Monday, August 3, 2020. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a virtual public hearing to be conducted by the Public Service Commission on Wednesday, September 16, 2020, at 10:00 a.m.

Preliminary Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to address administrative and legal issues in dockets related to the protection of jurisdictional public utilities’ customer data. The Commission does not anticipate a fiscal impact to the Agency as a result of the implementation of Regulation 103-823.2.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION: 103-823.2. Protection of Customer Data.

Purpose: In the ORS's Petition for Rulemaking, it stated that "the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data." ORS further recommended in its Petition that "the regulations regarding a utility's ability to sell customers' data be examined. ORS recommend[ed] the Commission consider regulations to apply to all regulated utilities that help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's consent." After the ORS filed its Petition for Rulemaking "for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent", the Commission issued Order Number 2019-877 on December 18, 2019. In Order Number 2019-877, the Commission approved the ORS's request to initiate a rulemaking, and the Commission opened a docket for this rulemaking. On December 20, 2019, the ORS filed its Proposed Regulation to Protect Customer Data with the Public Service Commission.

Legal Authority: S.C. Code Ann. Section 58-3-140.

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*. Thereafter, the proposed regulation will provide a documented process to help prevent the dissemination of customer data absent a customer's consent.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

In its November 27, 2019, Petition for Rulemaking, the Office of Regulatory Staff noted that "[o]n November 25, 2019, in a regularly scheduled Commission Business Meeting, Commissioner Ervin addressed an article filed in *The State* newspaper regarding the sale of customer information from one regulated utility to an outside third party, which then proceeded to use that information to attempt to sell insurance by way of mail marketing." ORS continued in its Petition to state that it would "show unto the Commission that the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data." On December 18, 2019, in Order No. 2019-877, the Commission approved the Office of Regulatory Staff's request to initiate a rulemaking and open a docket for the rulemaking. The need for a regulation to protect customer data is justified to help prevent the potential for "misleading advertisements" by prohibiting the sale of customer data by regulated public utilities absent a customer's direct consent.

DETERMINATION OF COSTS AND BENEFITS:

The Commission opines that it can absorb the administrative costs related to processing and adjudicating issues relevant to the protection of customer data. The benefits of the promulgation of this regulation include, in part, documented guidelines to protect customer data and documented guidelines that state when the disclosure of customer data is allowed.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The regulation will have no detrimental effect on the environment or public health if the regulation is not implemented.

Statement of Rationale:

Currently, no regulation exists which governs the protection of customer data in the custody of public utilities. To protect the public interest, a regulation should be promulgated which outlines the appropriate parameters and standards regarding a public utility's use of customer data. There was no scientific or technical basis relied upon in the development of this regulation.

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Indicates New Matter

Text:

103-823.2. Protection of Customer Data.

A. Definitions of Key Terms.

(1) Aggregated Data. The term "aggregated data" means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or the compilation of customer data from which all unique identifiers have been removed.

(2) Commission. The term "Commission" means the Public Service Commission of South Carolina.

(3) Customer Data. For purposes of this section, "customer data" means data about a **current or former** customer's electric, natural gas, water, or wastewater usage; information that is obtained as part of an advanced metering infrastructure; and personal identifying information, **as defined in S. C. Code Ann. Section 39-1-90(D)(3) and S. C. Code Ann. Section 16-13-510(D), including any future statutory amendments by the South Carolina General Assembly,** in the possession of electric, natural gas, water or wastewater public utilities, **including the name, account number, billing history, address of the customer, email address, telephone number, and fax number.**

Also, "customer data" means non-public retail customer-specific data or information that has been obtained or compiled by a public utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the public utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated public utility service; (c) about the customer's participation in regulated public utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.

(4) Non-Public Utility Operations. The term "non-public utility operations" means all business enterprises engaged in by a public utility that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Personal Identifying Information. The term "personal identifying information" means, a customer's name, account number, billing history, address, email address, telephone number, and fax number.

(5) Primary Purpose. The term “primary purpose” means the acquisition, storage or maintenance of customer data by a public utility, as defined by Title 58 of the South Carolina Code, which provides services pursuant to state law, federal law, or Order of the Commission.

(6) Secondary Commercial Purpose. The term “secondary commercial purpose” means any purpose that is not a primary purpose.

(7) Third Party. The term “third party” means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the public utility to act on the customer’s behalf; (ii) a regulated public utility serving the customer; or (iii) a contracted agent of the public utility. For purposes of this regulation, “third party” includes any non-public utility operations or affiliate of the public utility.

(8) Unique Identifier. The term “unique identifier” means a customer’s name, account number, meter number, mailing address, telephone number, or email address.

B. Aggregated data which has been aggregated to a degree that individual customer information is not identifiable shall not be considered “customer data.”

C. Customer Consent.

(1) A public utility shall not share, disclose, or otherwise make accessible to any third party a customer’s data, except as provided in subdivision (F) or upon the consent of the customer.

(2) A public utility shall not sell a customer’s data or any other personal identifying information for any purpose without the consent of the customer.

(3) The public utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer’s data without the prior consent of the customer.

(4) Before requesting a customer’s consent for disclosure of customer data, a public utility shall be required to make a full disclosure to the customer of the nature and scope of the data proposed to be disclosed, the identity of the proposed recipient and the intended use of the data by the proposed recipient.

D. If a public utility contracts with a third party for a service that allows a customer to monitor the customer’s usage, and that third party uses the data for a secondary commercial purpose, the contract between the public utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer’s consent to the use of his or her data for that secondary commercial purpose prior to the use of the data.

E. A public utility shall use reasonable security procedures and practices to protect a customer’s unencrypted consumption data from unauthorized access, destruction, use, modification, disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer’s consent.

F. Exceptions to Sections A through E.

(1) This section shall not preclude a public utility from using disclosing customer aggregated data for analysis, reporting, or program management ~~if all information has been removed regarding the individual identity of a customer.~~

(2) This section shall not preclude a public utility from disclosing customer data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, or for fraud prevention purposes, provided that the public utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal identifying information contained in the customer data from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer’s prior consent to that use.

(3) This section shall not preclude a public utility from disclosing customer data in the course of its operations:

(a) Where necessary to provide safe and reliable service;

(b) As required or permitted under state or federal law or regulation or by an order of the Commission or to a governmental town or municipality;

(c) Including disclosures pursuant to and permitted by the Fair Credit Reporting Act Section 1681 et seq., Title 15 of the United States Code including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Section 1681;

(d) Upon valid request from law enforcement;
(e) To respond to an emergency;
(f) To respond to service interruption reports or service quality issues;
(g) To restore power after a storm or other disruption;
(h) To respond to customers' requests for line locations, installation or repair of streetlights, support for construction or tree trimming/removal by customer, or other service orders or requests;
(i) To inform customers as to tree trimming/vegetation control plans and schedules;
(j) To respond to claims for property damage by the customer resulting from tree trimming/vegetation control or public utility construction;
(k) To respond to customer complaints;
(l) To protect the health or welfare of the customer or to prevent damage to the customer's property;
(m) To assist the customer in obtaining assistance from social services, community action, or charitable agencies;
(n) To perform credit checks or review payment history where customer deposits might otherwise be required or retained;

(o) Where circumstances require prompt disclosure of specific information to protect customers' interest or meet customers' reasonable customer service expectations; or

(p) This section shall not preclude a public utility from, in its provision of regulated public utility service, disclosing customer data to a third party, consistent with the public utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the public utility and upon written agreement by that third party to protect the confidentiality of such customer data.

G. If a customer chooses to disclose or authorizes the utility to disclose his or her customer data to a third party that is unaffiliated with and has no other business relationship with the public utility, the public utility shall not be responsible for the security of that data, or its use or misuse.

H. Public Utility Guidelines.

(1) Each electrical, natural gas, water or wastewater public utility shall develop and seek Commission approval of guidelines for implementation of this section.

(2) The electrical, natural gas, water or wastewater public utility shall file its initial guidelines within 180 days of the effective date of this regulation for Commission approval. The guidelines should, at minimum, address the following:

(a) Customer Notice and Awareness – practices to explain policies and procedures to customers.
(b) Customer Choice and Consent – processes that allow the customer to control access to customer data including processes for customers to monitor, correct or limit the use of customer data.
(c) Customer Data Access – procedures for use of customer data, purpose for collection, limitations of use of customer data and processes for customer non-standard requests.
(d) Data Quality and Security Procedures and Measures – procedures for security and methods to aggregate or anonymize data.
(e) Public Utility Accountability and Auditing – reporting of unauthorized disclosures, training protocol for employees, periodic evaluations, self-enforcement procedures and penalties.

(f) Frequency of Notice to Customers – a minimum of an initial and annual dates, unless a legal exception is applicable, that the public utility will notify its customers in writing of the utility's privacy policies.

I. No Private Right of Action.

This regulation shall be enforced by regulatory enforcement actions only. No private right of action for damages is created hereby.

J. Due Diligence Requirement When Utility Shares Customer Data with Third Parties

A public utility, as defined by Title 58 of the South Carolina Code, which provides services pursuant to state law, federal law, or Order of the Commission, **must complete the following when sharing customer data with third parties:**

- (1) Conduct through due diligence to verify that the third party understands and is capable of complying with privacy laws prior to contracting with the party and establishing ongoing monitoring to determine compliance during the contract term;
- (2) Request and review the third party's policies, procedures, internal controls, and training materials to ensure that the third party conducts appropriate training and oversight of employees;
- (3) Include in the contract with the third party clear expectations about compliance as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including failing to properly protect customer data; and
- (4) Take prompt action to address any problems identified through the monitoring process or that is otherwise brought to the utility's attention, including terminating the relationship when appropriate.